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U.S. Citizenship
and Immigration
Services

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FILE:

EAC 06 241 51000

Office: VERMONT SERVICE CENTER

Date:

FEB 27 2009

IN RE:

Petitioner:

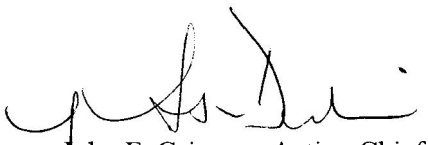
PETITION: Petition for Immigrant Abused Spouse Pursuant to Section 204(a)(1)(A)(iii) of the
Immigration and Nationality Act, 8 U.S.C. § 1154(a)(1)(A)(iii)

ON BEHALF OF PETITIONER:

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. Please refer to 8 C.F.R. § 103.5 for the specific requirements. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$585. Any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen, as required by 8 C.F.R. § 103.5(a)(1)(i).


John F. Grissom, Acting Chief
Administrative Appeals Office

DISCUSSION: The Director, Vermont Service Center, denied the immigrant visa petition and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner seeks immigrant classification under section 204(a)(1)(A)(iii) of the Act, 8 U.S.C. § 1154(a)(1)(A)(iii), as an alien battered or subjected to extreme cruelty by a United States citizen.

The director denied the petition because the petitioner did not establish that she entered into marriage with her United States citizen husband in good faith.

On appeal, counsel submits a brief and an additional statement from the petitioner.

Section 204(a)(1)(A)(iii) of the Act provides that an alien who is the spouse of a United States citizen may self-petition for immigrant classification if the alien demonstrates that he or she entered into the marriage with the United States citizen spouse in good faith and that during the marriage, the alien or a child of the alien was battered or subjected to extreme cruelty perpetrated by the alien's spouse. In addition, the alien must show that he or she is eligible to be classified as an immediate relative under section 201(b)(2)(A)(i) of the Act, resided with the abusive spouse, and is a person of good moral character. Section 204(a)(1)(A)(iii)(II) of the Act, 8 U.S.C. § 1154(a)(1)(A)(iii)(II).

Section 204(a)(1)(J) of the Act, 8 U.S.C. § 1154(a)(1)(J) states, in pertinent part:

In acting on petitions filed under clause (iii) or (iv) of subparagraph (A) . . . , or in making determinations under subparagraphs (C) and (D), the [Secretary of Homeland Security] shall consider any credible evidence relevant to the petition. The determination of what evidence is credible and the weight to be given that evidence shall be within the sole discretion of the [Secretary of Homeland Security].

The eligibility requirements are further explicated in the regulation at 8 C.F.R. § 204.2(c)(1), which states, in pertinent part:

(ix) *Good faith marriage.* A spousal self-petition cannot be approved if the self-petitioner entered into the marriage to the abuser for the primary purpose of circumventing the immigration laws. A self-petition will not be denied, however, solely because the spouses are not living together and the marriage is no longer viable.

The evidentiary guidelines for a self-petition under section 204(a)(1)(A)(iii) of the Act are further explicated in the regulation at 8 C.F.R. § 204.2(c)(2), which states, in pertinent part:

Evidence for a spousal self-petition –

(i) *General.* Self-petitioners are encouraged to submit primary evidence whenever possible. The Service will consider, however, any credible evidence relevant to the petition. The determination of what evidence is credible and the weight to be given that evidence shall be within the sole discretion of the Service.

* * *

(vii) *Good faith marriage.* Evidence of good faith at the time of marriage may include, but is not limited to, proof that one spouse has been listed as the other's spouse on insurance policies, property leases, income tax forms, or bank accounts; and testimony or other evidence regarding courtship, wedding ceremony, shared residence and experiences. Other types of readily available evidence might include the birth certificates of children born to the abuser and the spouse; police, medical, or court documents providing information about the relationship; and affidavits of persons with personal knowledge of the relationship. All credible relevant evidence will be considered.

The record in this case provides the following pertinent facts and procedural history. The petitioner is a native and citizen of Columbia who entered the United States (U.S.) on February 17, 2001 as a nonimmigrant visitor. On July 22, 2005, the petitioner married D-S-¹, a U.S. citizen, in New Jersey. D-S- subsequently filed a Form I-130, Petition for Alien Relative, on the petitioner's behalf, which remains pending along with the petitioner's concurrently filed Form I-485, Application to Adjust Status. The petitioner filed the instant Form I-360 on August 21, 2006. On March 29, 2007, the director issued a Request for Evidence (RFE) of, *inter alia*, the petitioner's good-faith entry into the marriage. The petitioner responded with additional evidence which the director found insufficient to establish her eligibility. Accordingly, the director denied the petition on July 19, 2007 and counsel timely appealed.

On appeal, counsel claims the petitioner has resolved any inconsistency in the record with her new statement and has met her burden of proof. We concur with the director's determinations. Counsel's claims and the evidence submitted on appeal fail to overcome the ground for denial.

Entry into the Marriage in Good Faith

The record contains the following evidence relevant to the petitioner's claim of entering into marriage with D-S- in good faith:

- The petitioner's August 9, 2006 letter and her August 29, 2007 statement submitted on appeal;
- Letter of the petitioner's friend, [REDACTED];
- Copy of a September 26, 2005 letter from the Bank of America stating that the petitioner and her husband opened a joint checking account on July 1, 2005;

¹ Name withheld to protect individual's identity

Copy of the unsigned, joint 2005 federal income tax return of the petitioner and her husband dated February 13, 2006;

- Copy of an apartment lease for one year commencing on September 1, 2005 listing the petitioner and her husband as the tenants; and
- Copy of the birth certificate of the petitioner's son, [REDACTED]

In her letter, the petitioner briefly states that she met her husband in January 2002, they dated for approximately three years and married in July 2005. The petitioner reports that "it was a beautiful ceremony" and she and her husband were "so happy." The petitioner does not further describe how she met her husband, their courtship, wedding, shared residence and experiences, apart from the abuse.

As noted by the director, the birth certificate of the petitioner's son shows that he was born on September 27, 2003, when the petitioner initially stated she and her husband were dating, but the birth certificate lists another man as the child's father. In her statement submitted on appeal, the petitioner explains that she and her husband began dating in March 2002, but broke up in December 2002 when her husband could not commit to their relationship. The petitioner states that from January 2003 to February 2004 she had a relationship with her son's father. She reports that she and her husband reconciled in August 2004. The petitioner does not explain, however, why she stated in her letter that she and her husband dated for approximately three years while she states on appeal that they dated for a year and nine months before their marriage. On appeal, the petitioner further states that she reconciled with her husband because she thought he had matured and after they got married "everything was going great." Again, the petitioner fails to further describe how she met her husband, their courtship, wedding, shared residence and experiences (apart from the abuse). The petitioner's testimony lacks detailed, probative information sufficient to demonstrate that she married her husband in good faith.

The remaining, relevant evidence also fails to establish the petitioner's claim. Mr. [REDACTED] states that he once visited the petitioner at the former couple's apartment, but he does not indicate that he ever met the petitioner's husband or observed them together. Mr. [REDACTED]'s letter focuses on the abuse and he provides no insight into the petitioner's expressed intentions in entering her marriage or her feelings for her husband.

The lease indicates that the petitioner and her husband lived together, but the petitioner submitted no evidence that she and her husband jointly paid the rent or, for example, the utilities for the apartment or that they shared any other marital responsibilities. The bank letter is unaccompanied by any statements, cancelled checks or other evidence that both the petitioner and her husband actually used the account. The 2005 income tax return is unsigned and is dated after the petitioner states that she and her husband separated. On appeal, the petitioner explains that she filed the return with her husband because an accountant told her that she would get in trouble otherwise. The petitioner does not indicate that she jointly filed the tax return with her husband because they shared financial assets and liabilities or for other reasons related to a bona fide marital relationship.

On appeal, counsel asserts that the abusive marriage “explains why [the petitioner] was unable to gather sufficient common documents.” While we recognize that domestic violence may involve the abuser’s control of financial assets and household accounts, the petitioner herself describes no such controlling behavior of her husband. The unsupported assertions of counsel do not constitute evidence and cannot satisfy the petitioner’s burden of proof. *Matter of Obaighena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

The preponderance of the relevant evidence fails to demonstrate that the petitioner entered into marriage with her husband in good faith, as required by section 204(a)(1)(A)(iii)(I)(aa) of the Act. The petitioner is consequently ineligible for immigrant classification under section 204(a)(1)(A)(iii) of the Act and her petition must be denied.

In visa petition proceedings, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has not been met. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.